

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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The State Employees' Association  
of New Hampshire, Inc.

Complainant

v.

State Negotiating Committee of  
the State of New Hampshire

Respondent

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CASE NO. S-0346

DECISION NO. 79011

APPEARANCES

Representing the State Employees' Association of N. H., Inc.:

Howard Zibel, Esquire, Counsel  
Robert Clark, Esquire, Counsel

Representing the State Negotiating Committee:

David Marshall & James Townsend, Counsels, Atty. Gen.'s Office  
John Ratoff, State Negotiator

BACKGROUND

This unfair labor practice complaint brought by the State Employees' Association of New Hampshire, Inc. against the State Negotiating Committee of the State of New Hampshire arises out of the negotiations for a contract for State Employees. The negotiations included negotiations for the salaries for certain "academic employees" who work for the State at the various schools covered by negotiations. During negotiations through the end of the fact-finding process, the State took the position that proposed item 21.5 was non-negotiable. The Association proposed that salaries for faculty in the Vocational-Technical College and Technical Institute System should be equalized to reflect equal pay for equal work. This simple-sounding request is part of a long-standing dispute which has been to the Supreme Court of the State of New Hampshire (Slayton v. Personnel Commission, 117 N. H. 206 (1977)) and is again at the Supreme Court in the matter SEA et al v. Roy Lang et al, #1978-017. The position of the State is that the matter is non-negotiable since salaries and equalization of pay and the application of that pay for academic employees is before the Court and because the proposal of the State Employees' Association is a matter of management discretion since it involves the administration of pay and not the amount of pay and, therefore, is not part of "wages" under the statute.

The factfinder in his report recommended that the Association's proposal be withdrawn since it is pending before the Court. The factfinder's report was accepted by the SEA and later by the State.

Following the factfinder's report, the State through the Attorney General's Office indicated to the SEA that it would submit proposed legislation to the New Hampshire Legislature to amend RSA 99:1-a to separate out academic employee salaries from those in the general salary ranges. The SEA objected to this procedure saying that it would unilaterally set wages for academic employees and had not been negotiated and in fact the matter had been resolved by the factfinder's report. The State countered by saying that it was merely a housekeeping measure which would allow machinery to exist to implement whatever Supreme Court decision is made. Because of the proposed submission of legislation which had not been submitted to the Legislature at the time of the hearing before the Board (but the Board has noted was submitted thereafter), the SEA brought this unfair labor practice complaint indicating that the State had violated the provisions of RSA 273-A:5 I (e) & (g) in that it has refused to negotiate upon wages for academic personnel. The State denies these claims and indicates that it has a right to submit legislation and, in any event, the legislation merely affects wage administration and not wages themselves.

A hearing was held at the Board's office in Concord on June 4, 1979.

FINDINGS OF FACT  
AND RULINGS OF LAW

The Board has reviewed the complexities of the academic employees' wage matter both through a review of the decision of the Supreme Court in Slayton v. Personnel Commission, supra, and the stipulation of facts in SEA v. Lang, supra. The matter is complex and the Supreme Court decision in the latter case has not yet been made. Therefore, there is doubt in the minds of the parties and in the mind of the Board as to what the final result will be.

Added to that doubt is the fact that, following the hearing, the Board is unable to find on the evidence presented by either side that the proposed legislation which has been submitted to the legislature by the Attorney General's Office will have the effect of changing any salary of any employee. It would appear on its face that the legislation in fact does set salaries. However, testimony at the hearing indicated that the way salaries have been administered by the Personnel Department in the past depended on whether employees were hired at a certain date, whether they worked a full year or a partial year, and what historic salaries have been paid. Indeed, the administration of this system is the essence of the Supreme Court matter. Therefore, the effect of the legislation on wages of individual teachers depends on the Supreme Court decision and the administration of the statute as proposed, if it is eventually passed.

The Board is, therefore, faced with many variables in making its decision. The eventual salaries of the academic employees will depend on the Supreme Court decision, the passage or non-passage of proposed legislation, and the administration of that legislation. It is clear to the Board that the salaries of academic employees were not negotiated by the parties. It is also clear that RSA 273-A requires the negotiation of wages. Therefore, if the effect of the submission of legislation results in a unilateral change in the salaries of any academic employees when the Supreme Court decision is made (that is, different from those salaries which the employees would have made under the Supreme Court decision had the legislation not been passed), the legislation will be a unilateral setting of wages without negotiations. If, on the other hand, the result of the passage of legislation is that the salaries do not change but rather they are made possible to administer because there is a statutory framework into which they fall, and it is the Board's understanding that this is the position of the state regarding the intent of the statute, then there will be no change and there will have been nothing to have been negotiated. Since neither party at hearing could establish before the Board what the actual effect of the passage of this statute would be, the Board is in doubt and will not be able to determine that effect until the Supreme Court issues its decision and the legislation is or is not passed. That being the case, the Board cannot order the State to withdraw the legislation submitted. Indeed, the Board is in doubt whether it has this power in any event once legislation has been introduced by a representative in the General Court. Especially when the effect of the legislation has not been established the Board will not order a halt to the legislative process.

On the other hand, the Board will not allow the unilateral establishment of wages by an employer without negotiations. Therefore, the Board's order following this discussion provides for various contingencies. If it can be established after the Supreme Court decision and action of the legislature that the wages of employees have been set unilaterally, the Board will require that before those new wages are implemented, they be negotiated so that the proper wages under the Supreme Court decision and the proper process of negotiation of wages for the future will follow the statutory scheme.

The Board, therefore, issues the following order:

ORDER

1. The request of the State Employees' Association of New Hampshire, Inc. for the finding of an unfair labor practice and for a cease and desist order requiring the State to withdraw (or not submit) legislation is denied, since the burden of proof was not met by the SEA as to the effect of such legislation.

2. In light of the uncertainties surrounding this case, the Board orders that if the wages of any academic employees in State service are changed because of the passage of the submitted legislation after the Supreme Court decision resulting in wages other than those which would have been received under the Supreme Court decision alone, the new wages shall not be implemented until negotiations over those wages have taken place.



EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 19th day of June, 1979

Members Richard H. Cummings and David L. Mayhew also present.  
All concurred. Board Clerk Evelyn LeBrun and Board Counsel  
Bradford Cook also present.